



December 22, 1987

Dear Mr. _____:

Thank you for your letter of December 11, 1987, requesting advice regarding property you purchased in March of this year.

You state that you purchased the property _____ from an elderly person who has no cash to live on but had an equity in her home. The sale was arranged by an attorney, _____ who represented the seller. The sale was offered by R _____ Corp. _____), a social service organization which attempts to keep elders in their home. The property was listed in the blue sheet, a San Francisco publication firm for probate sales, and no offers were received for a period of six months. You purchased the property for \$90,000 on a "contractual sale/leaseback arrangement" under which the seller has a "lifetime lease which is recorded and supersedes the transfer of title." Under this arrangement you cannot sell the property without the lessee's approval, live in it or raise the rent. Any sale of the property is subject to the lease.

The Marin County Assessor has reappraised the property based on comparable without consideration of the contractual encumbrances. You state that you believe that because of the encumbrances imposed by the lease, the value should remain as it previously was until the lease ceases. Further, you request our opinion on the validity of the reappraisal.

Your request implies two questions. First, whether your purchase of the property for \$90,000 under the described sale and leaseback arrangement constitutes a change in ownership which requires the reappraisal of the property. Second, if the property should be reappraised, whether the contractual limitations imposed by your sale and leaseback arrangement should be considered by the Assessor for purposes of determining the value of the property.

Section 60 of the Revenue and Taxation Code defines "change in ownership" as a transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest. Based upon your description of the transaction, we conclude that your purchase qualifies as a change in ownership. This conclusion assumes that the seller transferred to you the present beneficial interest in the property and did not withhold her life estate from the transfer. (Rev. & Tax. Code § 62(e) excludes from change in ownership any transfer by an instrument whose terms reserve to the transferor an estate for life.) If the seller withheld her life estate from the transfer of the property to you, then you would have received only a future interest, rather than a present interest, and the transaction could not be considered to be a change in ownership. Your description indicates, however, that the seller did not retain a life estate. Instead, she transferred the entire present beneficial interest to you and then leased the property back. Under these circumstances, we conclude that a change in ownership occurred and the property was properly reappraised.

With respect to the valuation issue, Revenue and Taxation Code Section 402.1 requires that the Assessor consider the effect upon the value of any enforceable restrictions to which the use of land may be subjected. This provision is limited to the assessment of land, however, and has been interpreted by the courts as being applicable only to governmentally imposed land use restrictions and not to private contractual arrangements. See Carlson v. Assessment Appeals Board No. 1, 167 Cal. App. 3d 1004. Thus, the assessor properly reappraised the property without consideration of the limitations imposed by the lease.

Mr.

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In summary, the information you have provided indicates that the assessor properly reappraised your property at _____. I hope you will find this information helpful.

Very truly yours,

(Original signed by)

Richard H. Ochsner
Assistant Chief Counsel

RHO:cb

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cc: Honorable James J. Dal Bon
Marin County Assessor
Mr. James J. Delaney
Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. Verne Walton